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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,822	04/14/2004	Takashi Ito	YOKOP010	6682
25920 7590 01/02/2008 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			EXAMINER VO, QUANG N	
			ART UNIT 2625	PAPER NUMBER
			MAIL DATE 01/02/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/824,822

Applicant(s)

ITO ET AL.

Examiner

Quang N. Vo

Art Unit

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9, 12, and 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 9, 12 and 15 are drawn to functional descriptive material NOT claimed as residing on a computer readable medium. MPEP 2106.IV.B.1 (a) (Functional Descriptive Material) states:

"Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer."

"Such claimed data structures do not define any structural or functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized."

Claims 9, 12, and 15, while defining a program, does not define a "computer-readable medium" and is thus non-statutory for that reasons. A program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" in order to make the claim statutory.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-15 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 4-11 of (U.S. 20040263882). Although the conflicting claims are not identical, they are not patentably distinct from each other.

Referring to claim 1:

With regard to claim 1, Ito et al. (U.S. 20040263882) discloses a method for determining lattice points to be referenced to prepare correspondence defining data that defines correspondence between the amount of each ink used by the printing apparatus and the color component value in a color system, said method comprising: referencing the original correspondence defining data which previously prescribes correspondence between the lattice points in the low-dimensional color space prescribed by less color components than the number of inks and the lattice points for ink amount in the ink amount space, thereby acquiring correspondence between the lattice points in the low-dimensional color space and the lattice points in the device-independent color space; prescribing a smoothness evaluation function which evaluates the smoothness of arrangement of lattice points in the device-independent color space and which has as a variable the lattice point position information in the low-dimensional color space; optimizing the arrangement of lattice points in the device-independent color-space by improving the rating of the smoothness evaluation function, with the lattice point position information in the low-dimensional color space varied; and referencing the original correspondence defining data, thereby associating the amount of each ink corresponding to the lattice points in the low-dimensional color space in the optimized state with the lattice points in the low-dimensional color space prescribed by the original correspondence defining data (claim 1, Ito et al. (U.S. 20040263882)).

The different between claim 1 of Ito et al. (U.S. 20040263882) and claim 1 in this application is the claim 1 of this application missing "said function having a function form differing depending on each region in the color gamut to which the lattice point to be evaluated belongs and also containing a constraint condition that the closer the lattice point is to the boundary of the region of the color gamut, the more the evaluated value decreases as the result of its movement."

As shown, claim 1 is the method claim similar to claim 1 of Ito et al. (U.S. 20040263882) with method steps corresponding directly to the method steps in claim 1 of (U.S. 20040263882). Therefore claim 1 is rejected as nonstatutory double patenting respect to claim 1 of (U.S. 20040263882).

With regard to claims 2-7, claims 2-7 are rejected since these claims depend on claim 1.

Referring to claim 8:

Claim 8 is the device claim similar to claim 4 of (U.S. 20040263882) with function steps corresponding directly to the function steps in claim 4 of (U.S. 20040263882). Therefore claim 8 is rejected as double patenting respect to claim 4 of (U.S. 20040263882).

Referring to claim 9:

Claim 9 is the program claim similar to claim 5 of (U.S. 20040263882) with instruction steps corresponding directly to the instruction steps in claim 5 of (U.S. 20040263882). Therefore claim 9 is rejected as double patenting respect to claim 5 of (U.S. 20040263882).

Referring to claim 10:

Claim 10 is the device claim similar to claim 6 of (U.S. 20040263882) with function steps corresponding directly to the function steps in claim 6 of (U.S. 20040263882). Therefore claim 10 is rejected as double patenting respect to claim 6 of (U.S. 20040263882).

Referring to claim 11:

Claim 11 is the method claim similar to claim 7 of (U.S. 20040263882) with function steps corresponding directly to the method steps in claim 1 of (U.S. 20040263882). Therefore claim 11 is rejected as double patenting respect to claim 7 of (U.S. 20040263882).

Referring to claim 12:

Claim 12 is the program claim similar to claim 8 of (U.S. 20040263882) with instruction steps corresponding directly to the instruction steps in claim 8 of (U.S. 20040263882). Therefore claim 12 is rejected as double patenting respect to claim 8 of (U.S. 20040263882).

Referring to claim 13:

Claim 13 is the device claim similar to claim 9 of (U.S. 20040263882) with function steps corresponding directly to the function steps in claim 9 of (U.S. 20040263882). Therefore claim 13 is rejected as double patenting respect to claim 9 of (U.S. 20040263882).

Referring to claim 14:

Claim 14 is the method claim similar to claim 10 of (U.S. 20040263882) with function steps corresponding directly to the method steps in claim 10 of (U.S. 20040263882). Therefore claim 14 is rejected as double patenting respect to claim 10 of (U.S. 20040263882).

Referring to claim 15:

Claim 15 is the program claim similar to claim 11 of (U.S. 20040263882) with instruction steps corresponding directly to the instruction steps in claim 11 of (U.S. 20040263882). Therefore claim 15 is rejected as double patenting respect to claim 11 of (U.S. 20040263882).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Vo whose telephone number is 5712701121. The examiner can normally be reached on 7:30AM-5:00PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, King Y. Poon can be reached on 5712727440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Quang N. Vo 12/21/07  
Patent Examiner



KING Y. POON  
SUPERVISORY PATENT EXAMINER